

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'B' BENCHES:: PUNE**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER &
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**ITA No.336/PUN/2023
(A.Y. 2017-18)**

Santosh Swarupchand Bhandari, Mahavir Traders, Gala No.2, Sahakar Bhavan, Market Yard, Tasgaon, Tal-Tasgaon, Dist-Sangli. PAN: AJIPB 7061 M	vs	ITO, Ward-1(4), Sangli.
Appellant/Assessee		Respondent /Revenue

Assessee by	:	None
Revenue by	:	Shri M.G. Jasnani, DR
Date of hearing	:	02/05/2023
Date of pronouncement	:	16/05/2023

ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of Commissioner of Income Tax (Appeals) [NFAC], Delhi, dated 20.02.2023 for A.Y.2017-18, emanating from the penalty order u/s. 271B of the Act dated 15/03/2022.

The assessee has raised the following grounds of appeal:

"1. On the facts and circumstances of the case and law the Id. Assessing Officer has erred to levy penalty u/s. 271B of Income Tax Act, 1961 without considering reasonable cause. (Rs. 1,29,919/-)

2. The appellant craves, leave to, add to, alter or amend the aforesaid grounds of appeal."

Brief facts of the case:-

2. As per penalty order, the assessee had not filed return of income for AY 2017-18. During the assessment proceedings, assessee filed copy of profit and loss account. As per the said profit and loss account, total turnover of the assessee was of Rs. 2,59,83,830/-. The AO issued notice to the assessee u/s. 271B as the assessee had not filed audit report. The assessee pleaded before the AO that assessee had submitted its books to his Chartered Accountant (CA), but CA failed to audit the books, then there was some dispute with the CA. The assessee relied on certain case-laws. The assessee pleaded before the AO that this was a valid reason and penalty was not leviable. The AO held that assessee has defaulted by not filing audit report within the stipulated time limit. The reason given by the assessee was not sufficient and valid, therefore, the AO levied penalty of Rs.1,29,919/- u/s. 271B of the Act.

3. Aggrieved by the order of the AO, the assessee filed appeal before the Id.CIT(A), however, assessee had not filed any submissions even though notices issued on 13/02/2023, 09/02/2023 & 01/09/2022. Therefore, based on the material available on record, the Id.CIT(A) decided the case *ex parte* and upheld the penalty order. Aggrieved by the said order of Id.CIT(A), the assessee is in appeal before this Tribunal.

4. Before us none appeared on behalf of the assessee. The assessee has filed written submissions along with copy of affidavit of accountant - Mr. Mahesh Ashok Kadam. In

the written submissions, assessee pleaded that all books were given to CA, who failed to audit the books and file the audit report. In the affidavit, Mr.Mahesh Ashok Kadam has accepted that books were given to CA but due to some reasons, he could not complete the accounting and could not file the audit report within the statutory time limit.

5. Ld.DR relied on the orders of the lower authorities.

Findings & analysis:-

6. It is an admitted fact by the assessee that Assessee had maintained books of accounts for the year under consideration. The assessee pleaded that the books were given to Accountant. In support of the same he filed copy of affidavit of Mr. Mahesh Kadam. It is claimed by Mr.Mahesh Kadam that he is an accountant, he collected the books but could not complete accounting. This affidavit is prepared on 25/01/2022. Thus, the assessee had not filed the said affidavit before the AO. The assessee has claimed that he had given books to Mr.Mahesh Kadam Accountant. However, as per the affidavit of Mr.Mahesh Kadam, he is not a Chartered Accountant, as he has mentioned in the affidavit that he had not given data to Chartered Accountant. As per the Income Tax Act, the Audit can be done only by a qualified Chartered Accountant. Thus, the assessee had not given books to a qualified CA. We do not know, the exact qualification of Mr.Kadam, who calls himself Accountant. However, as per Section 288 "*Explanation.*—In this section, "accountant" means a chartered accountant as defined in clause (b) of

sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) who holds a valid certificate of practice under sub-section (1) of [section 6](#) of that Act". Only a qualified CA is permitted to Audit books of account. In the affidavit it is claimed by Mr.Kadam, that he had not given data to CA. Thus, in the affidavit he is not referring to books. However, for Audit, books of account are required. Therefore, the claims made in the affidavit are contradictory and hence not reliable. In these facts and circumstances, we are of the opinion that there was no valid reason for not filling Audit report. Hence, we uphold the Penalty u/s 271B of the Act.

7. In the result, appeal of the assessee is dismissed.

Order pronounced in open Court on 16th May, 2023.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

Dated : 16th May, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, "B" Bench Pune.
6. Guard File.

By Order

Senior Private Secretary
ITAT, Pune.